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SUBJECT: NATIONAL INVESTMENT COMMISSION TAKES TWO STEPS
FORWARD

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SENSITIVE BUT UNCLASSIFIED. PLEASE PROTECT ACCORDINGLY.

¶1. (SBU) Summary: On March 27, the Council of Ministers approved Deputy Minister of Industry Sami Al-Araji as the new chairman of the National Investment Commission (NIC). The Council of Representatives (COR) must still confirm the appointment. Al-Araji has strong connections, experience, and a credibility within Iraq that his predecessors lacked, as well as an informed enthusiasm for what must be accomplished to promote investment in Iraq. Al-Araji is also working with key ministries to expand the mandate of the NIC to include promoting investment in the petroleum and energy sectors. That said, he faces serious hurdles in working to bring investment here -- most of which the recently-promulgated investment regulations will not address -- to include his own confirmation by the Council of Representatives. The new Chairman will need GOI and outside support to surround himself with a cadre of true investment promotion professionals, tackle thorny legislation regarding property ownership, and weave private business and provincial players into Iraq's national investment strategy if he is going to meet his ambitious investment agenda. End Summary.

A Chairman, At Last

¶2. (U) At its weekly meeting March 17, the Iraqi Council of Ministers (COM) approved Sami Al-Araji as the new Chairman of the NIC. The Council of Representatives (COR) must still confirm the appointment of Al-Araji, who until March 24 was concurrently serving as a deputy minister in the Ministry of Industry and Minerals. However, he started work the week of March 21 and has declared that he intends to carry out the full range of duties incumbent to his position. The lack of COR confirmation was a problem that bedeviled Al-Araji's predecessor, Ahmed Ridha, who spent more than a year in the job without COR confirmation before being sacked in October 2008 (reftel). Ridha's "unconfirmed" status caused some investors to question whether contracts and licenses Ridha had signed were actually binding. According to Deputy NIC Chairman Salar Mohammed Ameen, Al-Araji will not face these problems, and the licenses he grants will have full force under the National Investment Law (NIL). After the frustrating experiences with Ridha, the Prime Minister has taken steps to fully invest Al-Araji with all the legal authorities he needs, Ameen explained. The GOI will seek COR approval for Al-Araji in order to confer ministerial status, but otherwise "it is not important."

Al-Araji,s Priorities

¶3. (SBU) In a March 25 meeting with EMIN, al-Araji laid out

his key near and medium-term priorities, noting that he needed to staff the NIC with investment promotion professionals, and begin pressing for a legislative change to allow foreign ownership of land. Importantly, al-Araji also said that he is working with the Minister of Oil to reach an agreement on how the NIC can support investment in the petroleum sector, an area previously beyond the NIC's mandate. While putting together what he deemed his 2009-2012 Action Plans, al-Araji is seeking to weave greater private sector and provincial participation in the process, meeting widely with businessmen and planning enhanced NIC coordination with the Provincial Investment Commissions (PICs). The Chairman said investment promotion at the provincial level will be the mainstay, of his work; he promised to personally ensure that the PM formally certifies the appointment of all PIC chairpersons, several of whom have never been officially confirmed. He added Qof whom have never been officially confirmed. He added that U.S. support elsewhere will be crucial to these efforts, and asked for our help in building a cadre of qualified investment professionals, in the NIC.

¶4. (SBU) Al-Araji (a graduate of Michigan State University) expressed his personal disappointment at the perceived sluggishness of U.S. companies toward investigating opportunities in Iraq, saying that while they would have preference,, Iraq cannot wait for them and must court other potential suitors. EMIN suggested that the GOI could take immediate steps to make the market more attractive for U.S. companies, such as ratifying outstanding OPIC and TIFA agreements with the U.S. Al-Araji agreed, and pledged to work with the PM and the COR "to make it happen." Al-Araji also expressed his willingness to lead a large private sector and GOI business delegation to the U.S. soon, saying Iraq now has more to offer than in previous visits. More immediately, al-Araji is focused on an April 30 investment

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conference in London being organized by the British Government.

New Regulations Problematic

¶5. (U) Al-Araji's appointment coincides with the COM's long-awaited decision to promulgate new investment regulations. These new regulations, which Ameen said were gazetted and entered into force in mid-March, were intended to provide clear procedures to help the NIC work with the relevant GOI ministries to implement of the NIL. The NIL itself does a reasonable job of creating the investment incentives that are imperative to attracting investment into Iraq. However, the NIL alone does not outline the mechanisms, policies and procedures that national and provincial entities have discovered they need to deliver those incentives to investors.

¶6. (SBU) Unfortunately, our initial read of the new regulations reveals significant gaps. Most importantly, although the NIL creates 10-year tax holidays and other incentives, it does not specifically empower the NIC to grant these incentives to investors, thereby opening the door for ministries to challenge the NIC's right to do so. The new regulations do not clarify this important point. For example, the new regulations call for the creation of a "single window" (a.k.a. "one-stop shop") for investors to apply for investment licenses, but do not define which ministries must provide staff to the "window." Land allocation is a second source of serious consternation for the NIC and PICs, and it also remains largely undefined under the new regulations. While stating that "the NIC will endeavor to facilitate allocation of real estate," the lack clear procedural guidelines. Therefore, rather than creating a legal -- or at least procedural -- basis for the NIC to help investors obtain leases from land-owning ministries, the regulations leave each ministry

with de facto authority to create its own procedures. Additionally, the regulations do not address conflicts inherent between the NIL and other laws governing land, such as how leases will be renewed once they expire. (COMMENT: Al-Araji told EMIN that he is currently reviewing a draft law to reduce barriers to land ownership, which he termed "a top NIC priority." We assess that chances for passing such a bill this year are low. END COMMENT.)

17. (SBU) In some cases, the new regulations also appear to create new ambiguities between the central government and the provinces. Friction and misunderstandings between the NIC and the PICs are common and have reportedly already scuttled several deals. (For example, the Governor of Karbala recently announced that lack of coordination has prevented his PIC from providing NIL-defined incentives to all six of the investors to whom his it has granted licenses, resulting in nonimplementation of a reported US\$699 million in investment.) Rather than providing clarity or strengthening the PICs, the new regulations define a series of "Strategic Projects of a Federal Nature" -- including archeological, historical and communications projects -- as falling strictly under NIC authority. This appears likely to intensify confusions between the NIC and the PICs in areas such as religious tourism and telecommunications, which many PICs have worked hard to develop.

Comment

18. (SBU) Al-Araji's appointment could prove to be a significant step toward improving the investment climate in Iraq as he is both capable and well connected across a broad swath of the GOI. Well and favorably known to the Embassy as a Deputy Minister at MOIM, he has already expressed both enthusiasm for his portfolio and an understanding of the challenges he faces. Al-Araji, who remained in Iraq during the Saddam era and whose family descends from the Prophet Mohammed, enjoys a level of credibility among Iraqis that his predecessors did not, and his role as a chief in Iraq's largest employer (MOIM) enabled him to build relationships with political structures throughout the country. He has indicated to us that he is very keen on advancing large-scale, game-changing, proposals, such as an ambitious industrial development zone plan encompassing Baghdad International Airport. The entire project could bring in \$50 billion in foreign direct investment, but Al-Araji soberly notes that it also brings with it the range of institutional obstacles -- zoning, inadequate legislation, corruption, property rights, turf battles and lack of communication among ministries -- that make investing in Iraq so difficult. Al-Araji knows he faces a difficult task.

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